

ID: CCA\_2009121514175335

Number: **200953026**

Release Date: 12/31/2009

Office:

UILC: 865.07-00

---

**From:**

**Sent:** Tuesday, December 15, 2009 2:17:55 PM

**To:**

**Cc:**

**Subject:** RE: TR 1.865-2(b)

The dividend recapture rule of 1.865-2(d)(2) generally targets events that may create a built-in loss in stock, either by reducing the stock's value without reducing the shareholder's basis (as in the case of a dividend distributed shortly before sale) or by increasing basis without increasing value (as in the case of an investment in US property taxable under section 951(a)(1)(B) or a dividend received from a lower-tier corporation). Subpart F inclusions (but not non-subpart F E&P other than that invested in US property) increase basis; and PTI distributions (but not dividends) decrease basis, see section 961 and Notice 88-71, providing for recognition of section 986(c) gain or loss as if PTI were distributed and corresponding adjustments to stock basis immediately before stock is sold.

The value attributed to E&P may or may not be reflected in a shareholder's stock basis, depending on whether the shares were acquired before or after the E&P was realized and whether the E&P represented subpart F or non-subpart F income. But regardless of whether the E&P value is included in the shareholder's stock basis, the regulation reflects a general presumption that the distribution of E&P shortly before sale reduces the value and sales price of the stock. Since a PTI distribution, unlike a regular dividend, also reduces the shareholder's stock basis, it is not as likely to create a built-in loss. This difference may account for the exclusion of most section 951(a)(1)(A) inclusions, PTI distributions and any associated section 986(c) gain or loss from the regulation's definition of a dividend recapture amount.

In your case, an actual distribution of PTI before sale would reduce the shareholder's stock basis by the dollar amount of the related subpart F inclusion, thus reducing the loss realized on the stock sale. The section 986(c) gain realized on the actual PTI distribution would neither increase nor decrease the stock basis for purposes of computing the loss on the sale (the adjustment would be a "wash" if basis were deemed to go up for the gain and down for the distribution).

Please don't hesitate to call if you have further questions. Thanks.